

**IN THE UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF TEXAS
GALVESTON DIVISION**

STATES OF TEXAS AND IDAHO, <i>et al.</i>)
)
Plaintiffs,)
)
v.) No. 3-23-cv-00017
) (consolidated with 3:23-cv-00020)
U.S. ENVIRONMENTAL PROTECTION AGENCY, <i>et al.</i>)
)
Defendants.)
)

NOTICE OF SUPPLEMENTAL AUTHORITY

On October 16, 2024, Business Plaintiffs¹ gave notice of the Report and Recommendation of the District Court, Southern District of Florida, Magistrate Judge Maynard, granting summary judgment to the defendant landowner in *United States v. Sharfi*, No. 21-CV-14205 (September 21, 2024). [Dkt. 126]. On December 30, 2024, the District Court, Judge Marra, confirmed the Magistrate Judge's Report and Recommendation. *United States v. Sharfi*, No. 21-CV-14205 (S.D. Fla. Dec. 30, 2024).

¹ Business Plaintiffs are the American Farm Bureau Federation; American Petroleum Institute; American Road and Transportation Builders Association; Associated General Contractors of America; Leading Builders of America; Matagorda County Farm Bureau; National Apartment Association; the National Association of Home Builders of the United States; National Association of REALTORS®; National Cattlemen's Beef Association; National Corn Growers Association; National Mining Association; National Multifamily Housing Council; National Pork Producers Council; National Stone, Sand and Gravel Association; Public Lands Council; Texas Farm Bureau; and U.S. Poultry and Egg Association.

The district court's Order Affirming Report and Recommendation and its Judgment are attached as **Exhibits 1** and **2** respectively.

In its Order Affirming Report and Recommendation, the district court held that “n[one] of the man-made ditches or channels at issue . . . are ‘waters of the United States’ because they are not ‘relatively permanent water’ as defined by the United States Supreme Court in *Sackett v. Environmental Protection Agency*, 598 U.S. 651, 671-74 (2023) and *Rapanos v. United States*, 547 U.S. 715, 739 (2006).” Ex. 1 at 1-2. Further, the court held that,

even assuming these man-made channels are “waters of the United States,” the wetlands on Defendants’ property are clearly not “as a practical matter indistinguishable from” these waters because they do not have “a continuous surface connection with that water, making it difficult to determine where the ‘water’ ends and the ‘wetland’ begins.” *Sackett*, 598 U.S. at 678-79; *Rapanos*, 547 U.S. at 742. The Court also agrees with the Magistrate Judge’s conclusion that “continuous surface connection” means a surface water connection. Otherwise the Supreme Court’s statement in *Sackett* that “temporary interruptions in surface connection may sometimes occur because of phenomena like low tides or dry spells;” and the statement in *Rapanos* that “[w]etlands are ‘waters of the United States’ if they bear the ‘significant nexus’ of physical connection, which makes them as a practical matter *indistinguishable* from waters of the United States,” would have no practical meaning. See *Sackett*, 598 U.S. at 678; *Rapanos*, 547 U.S. at 755 (emphasis in the original).

Ex. 1 at 2.

Finally, the district court explained why “none of the cases cited by the United States in support of the proposition that ‘continuous surface connection’ does not have to be a surface water connection stand for that proposition.” Ex. 1 at 2-3.

Dated: January 7, 2025

Respectfully submitted,

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COUNSEL FOR BUSINESS PLAINTIFFS

CERTIFICATE OF SERVICE

The undersigned hereby certifies that on January 7, 2025, all counsel of record who are deemed to have consented to electronic service are being served with a copy of this document via the Court's CM/ECF system.

/s/ James B. Danford, Jr.
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